to allow a grantee the benefit it is not necessary, as is sometimes said, that the restrictive agreement must have entered into the consideration of his purchase. Once granted the intention to benefit such purchaser, knowledge on his part is unnecessary.[7] In finding the intention of the parties to the original agreement in all these cases, the courts naturally reach different results upon somewhat similar facts.

In a late New York case, the grantee of a portion of a lot of land which had originally formed part of a larger tract and had been bought at a sale, subject to a building restriction, sought to enforce the agreement against the grantee of another portion of the same lot, but was denied relief. *Lewis* v. *Ely*, 100 N. Y. App. Div. 252. The covenant could, doubtless, have been enforced by either of the parties against any grantee, in whole or in part, from the other original purchasers.[8] Equally, since the registry acts dispense with the necessity of actual notice, both parties would be bound to comply with the restriction at the suit of any grantee tracing his title from the other original purchasers. But the person from whom both plaintiff and defendant traced their title did not intend to bind successive owners of portions of his lot against each other. The agreements were entered into for the reciprocal benefit of the original purchasers and their successors. The result reached, though contrary to a New Jersey decision on a similar state of facts,[9] is the logical conclusion from the recognized rule that an owner of a lot subject to a restrictive agreement cannot enforce the restriction against a grantee to whom he has conveyed a portion of the lot.[10] The court, in its remarks, however, discloses the error into which one is likely to fall in adopting the New York conception of a restrictive agreement as an easement.[11] It speaks of the trend towards permitting only "the holders of the dominant estate and no other" to enforce "the burden of servitude," and questions the soundness of an earlier *dictum* that would allow a prior grantee an action against a subsequent purchaser. The proposition criticised, however, is supported by a square decision of the Court of Chancery,[12] and in no wise conflicts with the principal case. If it is manifest that such benefit was contemplated it should be enforced. Upon the test of intention each case is comparatively simple of solution, though there is, perhaps, a tendency in later cases to find that the covenant was entered into for the personal benefit of the covenantee.

DEGREES OF NEGLIGENCE. — Three theories have been advanced regarding degrees of negligence. The earlier English decisions, following the Roman law, classed negligence as slight, ordinary, and gross, varying conversely with the degree of care.[1] Within the last half-century two other views have been put forward. One suggests two degrees of negligence, (1) lack of that care required of the ordinary unskilled person, and (2) want of that care

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[7] See Rogers *v.* Hosegood, [1900] 2 Ch. 388, 407.
[8] See Schwoerer *v.* Boylston Market Ass., 99 Mass. 285.
[9] Winfield *v.* Henning, 21 N. J. Eq. 188.
[10] See King *v.* Dickson, 40 Ch. D. 596.
[11] 17 HARV. L. REV. 181.
[12] Barron *v.* Richard, *supra.*

[1] 1 Story, Bailm. § 17.

expected of the specialist.[2] The third, and now widely accepted view is that there are no degrees of negligence, but that negligence is absolute, namely, a lack of that care which the ordinary reasonable man would use under the circumstances.[3] The third view seems the most satisfactory. The needlessness of the distinction made in the second theory may be illustrated as follows. If an unskilled man undertakes to run a locomotive, he is held to the same standard of care as a skilled engineer, for his negligence consists largely in his trying at all. If, on the other hand, he volunteers in a case of necessity, when no expert is at hand, the degree of care required of him will be less under the altered circumstances; but negligence remains the same, that is, a failure to exercise the degree of care required. Degrees of care undoubtedly exist. Yet, when a man has failed to use the required care, the amount by which he falls short of the standard is altogether immaterial.

It is true that many courts, still recognizing degrees of negligence, apply the term "gross negligence" to something which should be classed rather as a species of wilful misconduct than as negligence.[4] An act done with a consciousness of probable results and reckless indifference to them contains another element beside the mere inadvertence characteristic of negligence. This may be well illustrated in the difference between the case of a locomotive engineer who accidentally falls asleep while running his train at high speed through a crowded city, and the case where he runs his train in the same way under these conditions when awake and conscious of the probability of accident. The former would be called "gross negligence" under the old rule; the latter is often named "gross negligence," but should be called "wantonness." Wantonness cannot involve actual intent to do the injury; yet it is clearly something different from negligence, which is mere inadvertence. Courts almost universally hold that contributory negligence of the plaintiff is no defense for "wantonness."[5] The moment the more serious element of wilfulness enters, negligence is disregarded as a factor in the result. A recent Wisconsin decision recognized the distinction between wantonness and negligence by holding a verdict inconsistent which found that a death was produced by both the ordinary negligence of the defendant and also his "gross negligence," a term which the court unfortunately use in the sense of wantonness. *Rideout* v. *Traction Co.*, 101 N. W. Rep. 672. In fact, the elements of consciousness of the result and complete indifference as to injury place wantonness in a separate class between negligent and intentional torts. Wantonness is as reprehensible as intentional wrongdoing and should be classed with it.

THE LAST CHANCE RULE IN ADMIRALTY. — The consequences of contributory negligence at common law and in admiralty are different: at common law the plaintiff is barred; in admiralty the damages are divided. But do both systems adopt the same definition of contributory negligence? Is

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[2] 1 Beven, Negligence, 2d ed., 20 ff.

[3] Milwaukee, etc., R. Co. *v.* Arms, 91 U. S. 489. See Steamboat New World *v.* King, 16 How. (U. S.) 469.

[4] Bolin *v.* Chicago, etc., R. Co., 108 Wis. 333.

[5] Central R. R. Co. *v.* Newman, 94 Ga. 560. See Palmer *v.* Chicago, etc., R. R. Co., 112 Ind. 250.